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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 727

WILLIAM P. SAILER, Individually and as Executive Director of the Philadelphia County Board of Assistance and STANLEY A. MILLER, Individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania,

Appellants,

v.

ELSIE MARY JANE LEGER, BERYL JERVIS, on behalf of themselves and all others similarly situated,

Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR APPELLEES

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No. 727

WILLIAM P. SAILER, Individually and as Executive Director of the Philadelphia County Board of Assistance and STANLEY A. MILLER, Individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania,

Appellants,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR APPELLEES

OPINION BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania is set out at A. 148 and is as yet unreported.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the United States Constitution which provides in part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and Article VI, cl. 2 of the United States Constitution providing in part that:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . ."

Also, Section 432(2) of the Public Welfare Code, Act of June 24, 1937, as amended by the Act of June 26, 1939, and as codified in the Act of June 13, 1967, Pa. Stat. Ann. tit. 62, § 432(2):

> "Except as hereinafter otherwise provided, and subject to the rules, regulations, and standards established by the department, both as to eligibility for assistance and as to its nature and extent, needy persons of the classes defined in clauses (1) and (2) of this section shall be eligible for assistance:
>
> * * *
>
> (2) Other persons who are citizens of the United States, or who, during the period January 1, 1938 to December 31, 1939, filed their declaration of intention to become citizens."

QUESTIONS PRESENTED

1. Whether Pennsylvania may consistent with the Equal Protection Clause of the Fourteenth Amendment deny general assistance to needy residents of the state solely because they are not United States citizens?

2. Whether Pennsylvania is precluded, by supreme federal power to regulate aliens from discriminatorily burdening their entrance and residence in the state through its general assistance citizenship requirement?

STATEMENT OF THE CASE

Appellee Elsie Marie Jane Leger brought this action on December 9, 1969 after her application for general assistance was denied solely on the grounds that the Pennsylvania statute, 62 P.S. § 432(2), barred general assistance to residents who were non-citizens. Mrs. Leger emigrated from Scotland at the age of twenty-eight to the United States on May 18, 1965 and upon entry to this country immediately took up employment that had been established for her prior to entry (A. 19). After working full-time for four years as a tax-paying resident of Pennsylvania, Mrs. Leger became ill, with no prior history of the ailment, and lost her employment. Faced with the threat of eviction she then applied for assistance to secure the necessities of life (A. 19-20).

Mrs. Beryl Jervis, added as a party plaintiff on March 3, 1970, emigrated from Panama to the United States on March 1, 1968 to undertake employment that had been arranged for her; she engaged in full-time employment, and has been a tax-paying resident of Pennsylvania, for two years (A. 21, 23). Mrs. Jervis became temporarily ill forcing her to give up her employment and apply for public assistance to obtain the necessities of life. Her application was denied on the sole ground that she was not a United States citizen (A. 22).

Pennsylvania is one of only three states that has a citizenship requirement in its wholly state funded assistance category (general assistance).* It permits aliens to partici-

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*The others are Arizona and Oklahoma. Only Arizona and seven other states have citizenship requirements in one or more federally funded public assistance categories.

pate in the various federal-state categorical assistance programs, 62 P.S. § 432(1), (A. 150), as it does in its medical assistance, 62 P.S. § 441.1 (Supp. 1969), and unemployment compensation programs, 43 P.S. § 753(1)(12) (Supp. 1969). Statistics show that between 65 and 70 non-citizens, otherwise eligible for assistance, apply for and are denied general assistance in Pennsylvania yearly (A. 17). In 1969, approximately 585,000 persons received categorical assistance, and 85,000 received general assistance in Pennsylvania (A. 156).

The resident aliens harmed by the citizenship bar have generally been in the state for many years, and evidence a long history of productive work contributing to the growth and development of the state and country (A. 143, 146). They are generally middle aged, and many are just below the age of sixty-five and therefore ineligible for categorical Old Age Assistance (A. 98, 86). Most were at the time of application for assistance sick or disabled (A. 98). In summary, they have been described as a class of "old, sick and lonely" people (A. 142). Their reasons for not becoming naturalized citizens have been not lack of loyalty or affinity for this nation, but rather inability to meet the literacy standard (A. 98, 143).

As was stipulated below, the citizenship bar has two primary consequences. First, it causes needy resident aliens undue hardship by depriving them of the means to secure the necessities of life, including food, clothing and shelter (A. 23). Secondly, it discourages continued residence in Pennsylvania of indigent resident aliens and causes such needy persons to remove to other States which will meet their needs (A. 23).

On July 13, 1970 the Court below held that the statute denying general assistance to residents of Pennsylvania who are not citizens, was invalid as violating the Equal Protection Clause of the United States Constitution (A. 160). The lower court granted by order of the same date (A. 162) plaintiffs' motion for preliminary and permanent injunction, from which order the Commonwealth has appealed. This Court noted probable jurisdiction on December 14, 1970.

SUMMARY OF ARGUMENT

The Pennsylvania general assistance citizenship requirement, 62 P.S. § 432(2), establishes two classes of needy state residents distinguishable solely by whether or not they possess United States citizenship. Non-citizens are denied general assistance on which they may depend to secure the necessities of life.

The Fourteenth Amendment's pledge of equal protection of the laws extends to aliens as well as citizens, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Classifications based upon alienage are inherently suspect and subjected to strict judicial scrutiny, affecting as they do a disadvantaged and politically voiceless minority, *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948). Moreover, classifications which, as here, burden and penalize exercise of the right of interstate travel and residence, a fundamental personal right fully accorded to aliens lawfully resident in this country, *Truax v. Raich*, 239 U.S. 33 (1915), are inherently invidious and can be justified only by a compelling state interest, *Shapiro v. Thompson*, 394 U.S. 618 (1969).

Pennsylvania, far from presenting a compelling state interest, has evinced no rational basis for the anti-alien classification established by 62 P.S. § 432(2). Conservation of state funds for citizens, the only evident purpose of the statute, is a patently insufficient basis to justify a discrimination invidious in both its line of classification–alienage–and its natural effect–burdening exercise of the right of interstate travel and residence, *Shapiro v. Thompson*, 394 U.S. 618 (1969). But the fact that Pennsylvania provides federal categorical assistance to a much larger group of needy resident aliens than that denied general assistance demonstrates beyond cavil that 62 P.S. § 432(2) constitutes a casual discrimination for discrimination's sake.

This Court, rejecting contentions of "special public interest" more apt than those raised by Appellants here, struck down a state statute discriminating against aliens in access

to a licensed employment opportunity, *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948). The Pennsylvania statute denying a subsistence livelihood to resident aliens when they become unable to work, no less offends the Fourteenth Amendment's guarantee of equal protection of the laws.

The general assistance citizenship requirement is additionally unconstitutional because it is preempted by, and in conflict with, supreme federal law. The federal government has exclusive power over the admission and regulation of aliens in this country, including regulation of those aliens who do or may need public support. Since the federal government through its Immigration and Naturalization Laws has established a comprehensive scheme of federal statutes and regulations covering aliens who may be economically dependent, Pennsylvania may not enact complementary or additional regulations in this area. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Chy Lung v. Freeman*, 92 U.S. 275 (1876).

Pennsylvania's power to apply its laws exclusively to aliens as a distinct class is confined to very narrow limits, and is a power which has been exercised in the instant case in clear conflict with federal law. Federal law particularizes the adverse consequences of destitution subsequent to entry, namely deportation, limiting the consequence to strictly defined circumstances. The state may not impose additional penalties or disabilities or take action against a wider evil than that perceived by the federal government. The state here is adding the penalty of deprivation of the necessities of life and denying aid to resident aliens on a standard more stringent than that established by the federal government, i.e. one irrespective of whether they have been in the country for more than five years or whether the causes of their indigency arose before or after entry.

Pennsylvania's citizenship requirement by discouraging continued residence of aliens in the state and forcing them to remove to other states also is in conflict with the federally conferred rights of aliens lawfully admitted to this

country to enter and abide in any state of their choice, *Truax v. Raich,* 239 U.S. 33 (1915), *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948). The interestate movement of indigents is a matter of national concern which does not permit of diverse treatment by the states, and clearly does not permit state regulation where such regulation, as here, burdens exercise of the alien's right of interstate movement and settlement. Pennsylvania's general assistance citizenship requirement offends federal law by denying to lawfully admitted aliens their federal right to abide in this state under an equality of legal privileges with citizens, *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948), 42 U.S.C. § 1981.

ARGUMENT

I

THE DENIAL OF GENERAL ASSISTANCE TO NEEDY RESIDENTS OF PENNSYLVANIA SOLELY BECAUSE THEY ARE NOT UNITED STATES CITIZENS VIOLATES THE EQUAL PROTECTION CLAUSE

The Pennsylvania general assistance citizenship requirement establishes two classes of needy resident persons, one composed of state residents who are United States citizens, and the other composed of state residents who do not possess United States citizenship. In all respects these two groups are indistinguishable, and both may otherwise qualify for general assistance upon which needy persons may depend to secure the necessities of life. Yet, Pennsylvania makes the former group eligible for general assistance and disqualifies the latter group. Appellees submit, as the Court below has held, that this classification is without rational basis and denies equal protection of the laws to indigent resident aliens.

The Fourteenth Amendment's Equal Protection Clause declares that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Equal

Protection Clause is "universal in [its] application, to all persons within the territorial jurisdiction, without regard to any differences of race, color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." *Yick Wo v. Hopkins,* 118 U.S. 356, 369 (1886). See also *Takahashi v. Fish and Game Commission,* 334 U.S. 410, 420 (1948); *Truax v. Raich,* 239 U.S. 33, 39 (1915). Cf. *Hellenic Lines Ltd. v. Rhoditis,* ___ U.S. ___, 26 L.Ed. 2d 252, 256 n. 5 (1970); *Bridges v. Wixon,* 326 U.S. 135, 161 (1945).

"When the existence of a distinct class is demonstrated and it is further shown that the laws, as written or applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated." *Hernandez v. Texas,* 347 U.S. 475, 478 (1954). This Court has long viewed with suspicion classifications based upon alienage, *Takahashi v. Fish and Game Commission,* 334 U.S. 410, 420 (1948), ancestry, *Hirabayashi v. United States,* 320 U.S. 81, 100 (1943), *Oyama v. State of California,* 332 U.S. 633, 646 (1948), or race, *McLaughlin v. Florida,* 379 U.S. 184, 191-192 (1964) and has held the states to a heavy burden of justification. Such criteria for classification are "constitutionally suspect", *Bolling v. Sharpe,* 347 U.S. 497, 499 (1954), for the reason that such considerations are generally irrelevant to any constitutionally acceptable legislative purpose, and usually mask simple prejudice or irrational antagonism toward groups of people. This has been particularly true of discrimination against aliens and nationality groups.[1] Where, as here, a

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[1] See, e.g. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886); *Truax v. Raich,* 239 U.S. 33 (1915); *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948); *Oyama v. California,* 332 U.S. 633, 650 (1948) (Murphy, Rutledge, J.J. concurring). Cf. *Shapiro v. Thompson,* 394 U.S. 618, 628 n. 7 (1969).

The general assistance citizenship bar, added by the Act of June 26, 1939, P.L. 1091, § 3, was passed by the Legislature five days after passage of the state's Alien Registration Act of June 21, 1939 (former 35 P.S. §§ 1801-06 (1940)). See *Hines v. Davidowitz,* 312 U.S.

state trumpets its purpose to discriminate on the basis of alienage strict judicial scrutiny is required.

In addition, classifications based on alienage adversely affect a "disadvantaged minority", who have no access to the political processes to redress their grievances, and on that ground must be rigidly scrutinized. In Chief Justice Stone's celebrated footnote in *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n. 4 (1938), it was said:

> [P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operations of those political processes ordinarily to be relied on to protect minorities, and which may call for a correspondingly more searching judicial inquiry.[2]

In the instant case a "discrete and insular" minority of alien applicants for general assistance, a group totally disenfranchised,[3] is discriminated against. Denied the right to vote, they "lack the most basic means of defending themselves in the political processes. Under such circumstances, courts should approach discriminatory legislation with special solicitude." *Purdy & Fitzpatrick v. California,* 79 Cal. Rptr. 77, 86, 456 P.2d 645, 654 (1969).

Pennsylvania's general assistance citizenship requirement denies subsistence welfare benefits to a class of needy residents defined solely by alienage. A state may not deny to aliens as a distinct group employment opportunities springing from governmental operation or sanction, *Takahashi v.*

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52 (1941) (holding this Act unconstitutional). The public assistance amendment was reportedly passed "at a time of war hysteria and anti-alien feelings" in the state (A. 145).

[2]See also *Hobson v. Hansen,* 269 F. Supp. 401, 508-509 (D.D.C. 1967), aff'd sub nom. *Smuck v. Hobson,* 408 F.2d 176 (D.C. Cir. 1969); *Kramer v. Union Free School Dist.,* 395 U.S. 621, 627-28 (1969).

[3]See Pa. Const., Art. 7, § 1 (U.S. citizenship qualification for voting).

Fish and Game Commission, 334 U.S. 410 (1948) (commercial fishing license), *Purdy & Fitzpatrick v. California*, 79 Cal. Rptr. 77, 456 P.2d 645 (1969) (public works employment). Analogously, a state may not constitutionally deny to aliens who can no longer work the benefits of public aid.

In *Takahashi* this Court struck down a state statute denying commercial fishing licenses to certain aliens holding that a state may not use such a classification "to prevent lawfully admitted aliens within its borders from earning a living." 334 U.S. 410, 418-419 (1948).[4]

Similarly, the California Supreme Court in *Purdy & Fitzpatrick* overturned a state law barring employment of aliens on public works, noting that "[A]ny classification which treats all aliens as undeserving and all United States citizens as deserving rests upon a very questionable basis. The citizen may be a newcomer to the state who has little 'stake' in the community; the alien may be a resident who has lived in California for a lengthy period, paid taxes, served in our armed forces, demonstrated his worth as a constructive human being, and contributed much to the growth and development of the state". 79 Cal. Rptr. 77, 88, 456 P.2d 645, 656 (1969).[5] If a state may not exclude aliens from governmentally initiated or sanctioned employment, neither may it deny aliens the right to obtain a bare subsistence income on the same terms as citizens.

Additionally, the facts of this case show that Pennsylvania's general assistance citizenship requirement burdens and penalizes the alien's exercise of his right to travel to and reside in the state, forcing him in time of need to remove elsewhere.

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[4] See also, *Truax v. Raich*, 239 U.S. 33 (1915).

[5] See also *Hosier v. Evans*, 39 U.S.L.W. 2035, ___ F. Supp. ___ (D. Vir. Is., Civ. No. 332, June 26, 1970) (denial of public education to alien children violates equal protection of the laws).

The right to travel is so fundamental to our notions of personal liberty[6] and Federal Union that in recent times this Court has declined to particularize its constitutional source, *United States v. Guest,* 383 U.S. 745, 757-758 (1966), *Shapiro v. Thompson,* 394 U.S. 618, 630 (and see cases cited at 630, n. 8). The right is consistently viewed as involving both "entrance" into and "abode" within any state, and is a right conferred upon aliens by the Federal Government when they are lawfully admitted to this country, *Truax v. Raich,* 239 U.S. 33, 39, 42 (1915); *Takahashi v. Fish and Game Commission,* 334 U.S. 410, 415-416 (1948). Indeed, the alien's right to travel and reside in any state rests not solely upon federal power over immigration, but reposes as well in the Fourteenth Amendment and laws adopted thereunder. In *Takahashi,* 334 U.S. at 419-420, this Court held that, "The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy, that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws."

In *Shapiro v. Thompson,* 394 U.S. 618, 631, 634 (1969) this Court struck down one-year welfare residency requirements holding that a classification which serves to penalize the exercise of the right to travel is constitutionally unjustifiable, unless shown necessary to promote a compelling governmental interest. Here, as there, the facts show a state statute discouraging entry and continued settlement of indigent persons in the state and causing such persons to remove to other states. And, as the "purpose of an act [is] found in its natural operation and effect . . .", *Truax v. Raich,* 239 U.S. 33, 40 (1915), it must be concluded that exclusion of aliens is among the purposes of this legislation. Pennsylvania may not deny the "ability . . . to obtain the very means to subsist", *Shapiro v. Thompson,* 394 U.S. 618, 627 (1969), on the basis of a statutory classification which

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[6] See *Kent v. Dulles,* 357 U.S. 116, 126 (1958).

in purpose and effect burdens the fundamental freedom of interstate travel and residence.

Whether strict or nominal scrutiny be employed Pennsylvania's general assistance citizenship requirement evinces no rational or permissible basis whatsoever. Conservation of welfare funds, the only evident purpose of the statute, is not a sufficient state purpose to justify under the Fourteenth Amendment an otherwise invidious classification, *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969),[7] as for instance a classification based upon the constitutionally suspect criterion of alienage, *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948). Nor is conservation of funds a permissible legislative objective where the effect, as here, is to burden the right of interstate movement and settlement, *Shapiro*, 394 U.S. at 629, 631, 634.

The Commonwealth's justification of preserving funds is particularly inappropriate and arbitrary when the class discriminated against is aliens, *Purdy & Fitzpatrick v. California*, 79 Cal. Rptr. 77, 456 F.2d 654 (1969). Aliens shoulder most of the responsibilities of citizens as, for example, paying taxes[8] and serving in the armed forces.[9] Unlike, the short-term residents in *Shapiro*, aliens may have been living in a state for many years and contributing to its economy. In Pennsylvania aliens denied general assistance have generally been well into their years and have contributed to the

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[7] Saving money does not justify discrimination in the criminal context, *Rinaldi v. Yeager*, 384 U.S. 305 (1966), *Griffin v. Illinois*, 351 U.S. 12 (1956), or discrimination in the provision of a public education to aliens, *Hosier v. Evans*, 39 U.S.L.W. 2035, ____ F. Supp. ____ (D. Vir. Is., Civ. No. 332, June 26, 1970).

[8] See e.g., Act of May 29, 1963, P.L. 49 § 2, as amended, 72 P.S. § 3403-1 et seq. (1964) (sales taxpayers are "any person[s]"); Gordon & Rosenfeld, Immigration Law & Procedure § 1.42 at 1-130-34 (1970) (aliens' tax obligations).

[9] See 50 U.S.C. App. § 454(a) (permanent resident aliens liable for service in Armed Services); Gordon & Rosenfeld, supra. § 2.49c at 2-233-36 (liability for military service).

growth of the state and country. Named plaintiffs in the present case were fully employed for all the years they were in the country before illness forced them to seek public aid.

When one considers how Pennsylvania treats aliens in other public welfare programs, it seems dubious that conservation of funds, or any other rational objective, lies behind the general assistance citizenship bar. Pennsylvania permits aliens to participate in its various categorical assistance programs (Aid to the Blind, Aid to the Disabled, Old Age Assistance, and Aid to Families With Dependent Children), 62 P.S. § 432(1), in medical assistance, 62 P.S. § 441.1(2) (Supp. 1969) and in unemployment compensation, 43 P.S. § 753(1) (12) (Supp. 1969).[10] As the Court found below, the categorical programs are very much larger than the general assistance program, with figures showing 585,000 persons on categorical assistance and 85,000 on general assistance.[11] Non-citizen applicants denied general assistance number between 65 and 70 annually (A. 17). Thus, as the Court below found, "it is difficult to lend credence to the rationale that aliens are denied access to the general assistance program in order to conserve funds." (A. 156-157).

The Commonwealth seeks to explain away its alien discrimination by contending that it has an unqualified right to restrict its public money or services to its own citizens. See *People v. Crane*, 214 N.Y. 154, 108 N.E. 427 (1915), aff'd sub. nom. *Crane v. New York*, 239 U.S. 195 (1915), upholding a New York statute prohibiting provision for

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[10] A general pattern of inclusion of aliens in public benefit programs in consonant with the expression of legislative intent in the Public Welfare Code of "promoting the welfare and happiness of *all of the people* of the Commonwealth, by providing public assistance to *all* of its needy and distressed." 62 P.S. § 401 (1964) (emphasis added).

[11] Pa. Department of Public Welfare Report of Public Assistance, December 31, 1969, cited at A. 156, n. 8.

alien employment in public works contracts.[12] This contention offends the settled principle that the power of a state to apply its laws exclusively to aliens as a class is confined within narrow limits, *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948), for "Appellants' reasoning would logically permit the State to bar" . . . aliens "from schools, parks, and libraries or deprive them of police and fire protection", *Shapiro v. Thompson*, 394 U.S. 618, 632 (1969). It is to prevent such catastrophic discrimination that the Fourteenth Amendment and the laws adopted thereunder assure that aliens may reside in any state "on an equality of legal privileges with all citizens under non-discriminatory laws", *Takahashi*, 334 U.S. at 419-420.

This case does not involve regulation of the exploitation of a natural resource "owned" by the citizens of a state, see e.g. *McCready v. Virginia*, 94 U.S. 391 (1877), *Patsone v. Pennsylvania*, 232 U.S. 138 (1914),[13] but rather the distri-

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[12] *People v. Crane* was largely grounded upon the "right-privilege" distinction, a doctrine without continued vitality to answer a constitutional challenge. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Shapiro v. Thompson*, 394 U.S. 618, 627 n. 6 (1969); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963). See also *Slochower v. Bd. of Higher Education*, 350 U.S. 551 (1956).

Crane was affirmed on the basis of *Heim v. McCall*, 239 U.S. 175 (1915) (holding public works citizenship requirement does not violate employer's freedom of contract), which in turn relied on *Atkins v. Kansas*, 191 U.S. 207 (1903) (holding regulation of hours in public employment not violation of employer's freedom to contract nor of equal protection of the laws). But see Powell, "The Right to Work for the State", 16 Colum. L. Rev. 99, 111-112 (1916); Note, "National Power to Control State Discrimination Against Foreign Goods and Persons", 12 Stanford L. Rev. 355, 366-68 (1960); Note, "Constitutionality of Restrictions on Aliens' Right to Work", 57 Colum. L. Rev. 1012, 1017-18 (1957).

[13] Note that even the "special public interest" in ownership of scarce natural resources is insufficient to justify anti-alien discrimination. *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420-421 (1948).

bution of ordinary tax revenues to which the alien has made his contribution and in which no "special public interest" inheres. Moreover, the "special public interest doctrine" appears to be no more than legal shorthand for the state's power to preserve important resources, and does not detract in any way from the constitutional command to exercise that power so as not to discriminate without reason against non-citizens, *Toomer v. Witsell,* 334 U.S. 385, 402 (1948). The statute here challenged raises a classification demonstrably invidious, without rational basis, and burdensome to the alien's freedom of interstate movement and residence. Saving welfare funds, although labeled a "special public interest" by Appellants herein, cannot justify such a classification, *Shapiro v. Thompson,* 394 U.S. 618, 633 (1969), *Takahashi v. Fish and Game Commission,* 334 U.S. 410, 420-421 (1948), *Purdy & Fitzpatrick v. California,* 79 Cal. Rptr. 77, 88-89, 456 P.2d 645, 656-657 (1969).

II

PENNSYLVANIA'S CITIZENSHIP REQUIREMENT FOR GENERAL ASSISTANCE CONFLICTS WITH SUPREME FEDERAL POWER TO REGULATE ALIENS BY DISCRIMINATORY BURDENING THE ENTRANCE INTO AND RESIDENCE IN PENNSYLVANIA OF ALIENS LAWFULLY ADMITTED TO THE UNITED STATES

"Whenever the terms in which a power is granted to Congress, or the nature of the power, require that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures as if they had been expressly forbidden to act on it," *Sturges v. Crowninshield,* 4 Wheat. 118, 192 (1817) (Marshall, C.J.). One such power is the power of the federal government over the admission, naturalization, and regulation of aliens,[14] concerning as it

[14]Such power springs from Congress' authority under our Constitution "To regulate Commerce with foreign nations . . . . ," Art. I, § 8, cl. 3, and "To establish an uniform Rule of Naturalization . . . ," Art. I, § 8, cl. 4. This constitutional grant of power, and any Acts of

does "the exterior relation of this whole nation with other nations and governments", *Henderson v. Wickham*, 92 U.S. 259, 273 (1876), for unless exclusive power be accorded to the national Congress "a single State can, at her pleasure, embroil us in disastrous quarrels with other nations," *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876). The regulation of aliens is one of the basic aspects of national sovereignty, *Chinese Exclusion Case*, 130 U.S. 581, 604-605 (1889), *Galvan v. Press*, 347 U.S. 522, 531 (1954), and so "intimately blended and intertwined with responsibilities of the national government" that state and federal laws on the same subject cannot co-exist, *Hines v. Davidowitz*, 312 U.S. 52, 66 (1941).

In *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876) this Court struck down state statutes conditioning disembarkation of aliens on giving bond against possible pauperism, holding that the right of any state to protect herself, in the absence of Congressional action, "by necessary and proper laws against paupers and convicted criminals from abroad" could arise "only from a vital necessity for its exercise". This Court has consistently held that any concurrent state power to regulate aliens as a distinct class is confined to the narrowest of limits, *Hines v. Davidowitz*, 312 U.S. 52, 68 (1941), *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948).

Pennsylvania argues that her general assistance citizenship requirement does not contravene but complements federal policy, citing the Immigration and Naturalization Act, 8 U.S.C. § 1101, *et seq.* That Act requires exclusion of aliens seeking entry to this country who have physical ailments which may affect their ability to earn a living, 8 U.S.C. § 1182(a) (8), 66 Stat. 182, or who are likely at any time to become public charges, 8 U.S.C. § 1182 (a) (15), 66 Stat.

Congress pursuant thereto, are "the supreme Law of the Land" under Art. VI, cl. 2 of our Constitution.

182. Admission of an alien may be conditioned on the giving of a bond or cash deposit, 8 U.S.C. § 1183, 66 Stat. 188, and a resident alien who becomes a public charge within five years after entry "from causes not affirmatively shown to have arisen after entry" may be deported, 8 U.S.C. § 1251(a) (8), 66 Stat. 204. The Commonwealth's argument is essentially that imposition of a disability in receipt of public assistance upon needy resident aliens supports a federal policy of exclusion of pauper aliens.

The question is not so much whether the citizenship requirement in 62 P.S. § 432(2) is supportive of federal immigration and naturalization policy, but whether Pennsylvania is empowered to act on this subject. The Commonwealth admits that the federal government has pre-empted the field with respect to admission, residence, and regulation of aliens, including those who do or may need public support; if that be true, 62 P.S. § 432(2) must fall, *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876).

Even if Pennsylvania be thought to have concurrent power to regulate pauper aliens, "where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard . . . states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations", *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941). See also *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419 (1948).

The regulation of aliens who may require public support is covered by a comprehensive scheme of federal statutes and regulations indicative of an intent to preclude concurrent state action. See *Pennsylvania v. Nelson*, 350 U.S. 497, 502 (1956). In order to assure an alien seeking admission is not likely to become a public charge the federal government requires that every applicant for an immigration visa has an affidavit of support from a person within the United States, unless he demonstrates financial responsibility by reason of his own funds or by evidence of suitable, permanent

prearranged employment. Gordon and Rosenfeld, Immigration Law and Procedure, §§ 2.39 and 3.7e at 2-185-192 and 3-50-54 (1970). Many immigrants are required to have a specific job offer and prior certification from the Secretary of Labor. *Ibid* and § 3.6 at 3-38-44.5.

But once lawfully admitted to this country, an alien who is forced to seek public aid is deportable only if he becomes needy within five years after his admission from causes arising prior to his entry, 8 U.S.C. § 1251(a) (8), 66 Stat. 204. The statute makes pauperizing occurrences after entry irrelevant to the alien's right to remain, *Ex Parte Costarelli*, 295 Fed. 217 (D. Mass. 1924), so that receipt of public assistance because of causes shown to have arisen after entry cannot lead to deportation, *Foley v. Ward*, 13 F. Supp. 915 (D. Mass. 1936). See also Gordon and Rosenfeld, Immigration Law and Procedure, § 4.21 (2) at 4-143. Thus the federal scheme particularizes the consequences of destitution subsequent to entry, namely deportation, and limits this consequence to strictly defined circumstances. No state in its zeal to legislate upon this subject may impose additional penalties or disabilities, or take action against a wider evil than that perceived by the federal government, *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941). See *Amalgamated Assoc. of S.E.R.M.C.E. v. Wisconsin Employment Relations Board*, 340 U.S. 383, 394 (1951); *Motor Coach Employees v. State of Missouri*, 374 U.S. 74, 82 (1963).

The Pennsylvania general assistance citizenship bar offends this cardinal principle of federal supremacy. Pennsylvania, on the basis of a standard more stringent than that set by the federal government, has acted to deny needy resident aliens the necessities of life and to drive them from its borders. General assistance is denied to impoverished aliens regardless of whether they have been in this country more than five years or whether the causes of their indigency arose before or after entry. The necessary result, "undue hardship to them by depriving them of the means to secure the necessities of life, including food, clothing and shelter," "causes such needy persons to remove to other states . . ."

(A. 23). Thus some needy aliens, because they have been resident in the United States for more than five years or because the causes of their indigency arose after entry, are not deportable from this country on grounds of indigency and are entitled to the full measure of rights and privileges conferred by the federal government, including the right to reside in any state under non-discriminatory laws. *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948). Nonetheless, these aliens. who may have for years contributed their energies and tax dollars to the Commonwealth of Pennsylvania or served in the Armed Services, are subject to discriminatory deprivation of the necessities of life and embargo by this state.

This Court has long held that the lawfully admitted alien has a federal right to abide in any state on an equality of legal privileges with citizens, *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 420 (1948). Aliens are entitled to equality of rights and privileges with citizens in respect to security of persons and property, 42 U.S.C. § 1981, R.S. § 1977 (16 Stat. 144), and of access to public benefit programs receiving federal financial aid, 42 U.S.C. § 2000d, 70 Stat. 252. See also 42 U.S.C. § 2000e-2(a), 78 Stat. 255 (prohibiting employment discrimination against "any individual" on the basis of national origin). Criminal sanctions are imposed for willful deprivation of the equal rights and privileges of the alien, or for differential punishments or penalties imposed on the alien, under color of law, 18 U.S.C. § 242, 62 Stat. 696.

Freedom of interstate travel and settlement is a fundamental right, springing both from concepts of personal liberty, *Shapiro v. Thompson*, 394 U.S. 618, 643 (1969) (Stewart, J., concurring), and from the nature of our federal Union, *United States v. Guest*, 383 U.S. 745, 757 (1966). This Court has consistently held that this vital personal freedom extends to aliens lawfully admitted to the United States, *Truax v. Raich*, 239 U.S. 33, 39 (1915), *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 415-416 (1948). See *Gegiow v. Uhl*, 239 U.S. 3, 10 (1915).

Pennsylvania's general assistance citizenship requirement, 62 P.S. § 432(2), burdens plaintiffs' freedom of interstate travel and settlement and thus conflicts with supreme federal law. As stipulated herein, the state provision "discourages continued residence in Pennsylvania of indigent resident aliens and causes such needy persons to remove to other states which will meet their needs." (A. 23). That such is the effect of the statute is hardly surprising: if a one-year waiting period burdens exercise of freedom of travel and residence, *Shapiro v. Thompson*, 394 U.S. 618 (1969), so must an absolute bar. See Note, "Residence Requirements After *Shapiro v. Thompson*," 70 Colum. L. Rev. 134, 141 (Jan. 1970).

In *Truax v. Raich*, 239 U.S. 33 (1915) and *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948) this Court overturned alien employment restrictions holding that:

> "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work." 239 U.S. at 42; 334 U.S. at 116.

That reasoning is germane here. Just as an employable person cannot live where he cannot work, a resident alien who becomes ill or is disabled and can no longer work surely cannot live where he cannot obtain public aid to provide the necessities of life in his time of trouble.

In *Edwards v. California*, 314 U.S. 160, 175-176 (1941) this court overturned a state statute prohibiting transportation of indigents into the state as an unconstitutional burden to interstate commerce, noting that interstate movement of indigents is "a matter of national concern" which "does not admit of diverse treatment by the several States." In *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 419-420 (1948), this Court struck down a state statute

denying commercial fishing licenses to certain aliens as a denial of equal protection of the laws and in conflict with broad federal power to regulate aliens, holding that state laws which discriminatorily burden the entrance into or residence in the state of aliens lawfully within this country are invalid. Accord: *Truax v. Raich*, 239 U.S. 33, 39, 42 (1915). A statute which, as here, purposefully burdens the indigent alien's right of entry and continued residence in Pennsylvania, irreconciliably offends federal law.

Pennsylvania has raised no "vital necessity" for regulating pauper aliens through differential operation of its general assistance program, *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876). Here as in *Chy Lung*, 92 U.S. at 280, the state's only real interest in regulation is fiscal, a consideration which hardly rises to a "vital necessity" in this case.[15] 62 P.S. § 432(2) must be struck down as an unnecessary and impermissible intrusion into an area of exclusive federal concern and stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress", *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

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[15]The Court below found it difficult to believe that fiscal concern underlies 62 P.S. 432(2), since alien applicants for general assistance are fewer than 100 per year (A. 156-157).

CONCLUSION

For the reasons stated above, the judgment below should be affirmed.

Respectfully submitted,

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